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Statement of the Honorable Michael G. Oxley
Chairman, Subcommittee on Finance and Hazardous Materials
Hearing on Federal Barriers to Common Sense Cleanups

Columbus, Ohio - February 14, 1997

I want to welcome my colleagues to Columbus, our great capital city, and thank our witnesses for their appearance today. Today's **hearing** topic is federal barriers to **common sense** cleanups. What that means in **plain** English is we are looking at how we can **get** toxic waste **cleaned** up faster so we can put the neighbors back in neighborhoods.

We're closing in on two **decades** now since Congress **passed** the Comprehensive Environmental **Response**, Compensation and Liability Act, also known as Superfund, to clean up toxic waste sites and hold people liable for the toxic contamination they create. In the late **1970s**, there **were** **several** high profile **cases**, including the Love Canal **case** in Niagara Falls, New York, where people were **being** exposed to contamination without adequate **recourse** under the law.

Congress stepped in and passed **Superfund**. Under Superfund, if you owned or operated a site where there was a release of a hazardous substance, or you **generated** or transported **hazardous** substances that **were released** at a site, you can be held strictly, jointly, **severally** and **retroactively** liable for the cleanup costs. In layman's terms, if it's your mess, you pay.

It also means in some cases that if it's not your mess, you pay anyway. You can be **held** liable for the entire cost of cleanup even if you contributed only a **small** amount, even if your **actions** were completely legal at the time, or even if you were **compelled** to conduct waste creating **activities** by the government. A lot of sites we are cleaning up today are **contaminated** with production **wastes** from World War II.

People who get tagged by **the** government for cleanup costs they think are unfair **fight hard**, and they try to **reduce** their own liability by finding anyone they can to **share** the burden. We **have** heard a lot of stories in Washington about little guys who have been pulled into these **lawsuits**: drycleaners, gas station owners, pizza shop **owners** - even school boards **and** the girl scouts. **Thus**,

hopefully, is **not what Congress** had in mind. Often it's hard to prove someone disposed of waste 30, 40 or 50 years ago, but it's even harder and sometimes more expensive for them to prove they didn't, so some people **settle out of** court for pollution they claim they never created, while others pay even more to lawyers to fight for years about who put what where.

This system has big problems. It's not efficient, it's not fair, it's a drag on the economy, and most importantly, it's not getting the messes cleaned up. The EPA's own Inspector General agreed with other commentators **that** this fighting over liability is slowing things down. The average **Superfund** site takes more than 12 years to clean up. Think about that. That means that your child in kindergarten will start college before the toxic waste near your home is removed. We've got to do better - a lot better.

But that's not all. Even if the site near you isn't on the 12 year plan for a federal cleanup, **Superfund** might be shutting down cleanup. Well, not **Superfund** itself, but the *threat* of Superfund. If a site isn't on the **Superfund** list, the owner could clean it up any time, but a lot of owners don't want to do that for fear that they might have to pay twice - once for their cleanup and once for the cleanup the government makes them do. Nobody wants to pay a contractor to study a site, design a cleanup, move a bunch of dirt, scoop up the contamination, maybe install some expensive pollution control equipment, and then be told by the government that they have to start all over again. **That** has happened, and it's still happening.

Banks didn't even want to lend money to people who wanted to redevelop contaminated sites, but Congress passed a law last fall that we hope will give lenders some peace of mind.

One of the key problems we want to look at today is cleanups that people conduct under State law. Ohio passed a landmark voluntary cleanup law a few years ago with Governor Voinovich's leadership. That law offers owners of contaminated sites a chance to clean up now in exchange for an agreement from the State that it won't sue later on.

Some companies are happy to do that. They can sell land that might have sat idle for years and get rid of liability uncertainty that has been hanging over their heads. Other companies hesitate. because even though they have an agreement with the State, the federal government could still sue them to redo the cleanup.

We have as many as 450,000 sites nationwide that are sitting idle or underused because of fear of environmental liabilities. We call these "**brownfields.**" There may not be any contamination at all on some of them, but fear that there might be has put them on a seemingly permanent hold. Meanwhile, the new factories and the jobs go elsewhere (often out into undeveloped "**greenfield**" land), property values decline, and the neighborhood suffers.

We visited a site like this right here in Columbus today. We visited a site that sat idle for 10 years because of fear of liability. Finally the Ohio Voluntary Action Program came along, and cleanup is underway. But because of federal liability, the owner still feels there's something to fear

Despite federal liability, **for this** company the choice to, clean up made sense once the State gave its word that once the job **was done**, the State would not pursue further liability. At many other sites here in Ohio and across **the** country, people still aren't going to feel it's okay to clean up until they know that once they're done, they're done for good with State **and federal** liability. There are a lot of States that have followed Ohio's lead and **encouraged** voluntary cleanup. We want this good idea to have a chance to work.

So this is what we mean by "federal barriers to common sense cleanups." We want to explore what we can do to keep sites on the federal cleanup list **from** taking 12 years to complete, and what we can do for sites that aren't on the federal list to make sure they don't stay contaminated indefinitely out of fear of federal law.

I look forward to **the** testimony of our witnesses today on these important issues.

One **last** important note. We have Members of Congress here today from all over the country, and I want to recognize their commitment to their work, **the** people's work, especially with families at home waiting for **them** on Valentine's Day.